

Adam Joseph Welch

June 30, 2006

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<p>1 that may impair his ability to remember.</p> <p>2 Are you on any medication right now that could</p> <p>3 impair your ability to remember today?</p> <p>4 A. No.</p> <p>5 Q. Is there any reason you can think of why you</p> <p>6 will not be able to answer my questions fully and</p> <p>7 truthfully?</p> <p>8 A. No.</p> <p>9 Q. Please state your current residential address.</p> <p>10 A. 4105 B 26th Avenue S.W., Seattle, Washington,</p> <p>11 98106.</p> <p>12 Q. Mr. Welch, do you have a criminal record?</p> <p>13 A. No, I don't.</p> <p>14 Q. Have you ever served in the military?</p> <p>15 A. No, I don't. No, I have not.</p> <p>16 Q. Did you review any documents in preparation for</p> <p>17 today's deposition?</p> <p>18 A. No, other than the subpoena.</p> <p>19 Q. Did you bring any documents with you today?</p> <p>20 A. No.</p> <p>21 Q. Did you talk to anyone other than your lawyer,</p> <p>22 Mr. Freeman, in preparation for today's deposition?</p> <p>23 A. I talked to Seth a little bit about what was</p> <p>24 going on.</p> <p>25 Q. What did you discuss with Seth?</p>	<p>1 same or opposite sex, bestiality, masturbation, sadistic</p> <p>2 or masochistic abuse, or lascivious exhibition of the</p> <p>3 genitals or pubic area of any person.</p> <p>4 Do you understand this definition?</p> <p>5 A. Yes. That's quite a definition.</p> <p>6 Q. I'm going to use the abbreviation "IMG" for</p> <p>7 Impulse Media Group today.</p> <p>8 Do you understand that?</p> <p>9 A. Sure.</p> <p>10 Q. Please describe IMG's business.</p> <p>11 MR. APGOOD: Objection. Calls for</p> <p>12 speculation.</p> <p>13 A. Okay. We run pay sites and affiliate program.</p> <p>14 Q. When you say "we," is that IMG?</p> <p>15 A. Well, I don't work there anymore, but, yes.</p> <p>16 IMG, that's what they do for their primary business.</p> <p>17 Q. And when were you employed at IMG?</p> <p>18 A. Let's see. May 2003 to November 2005, I</p> <p>19 believe. I think that's right.</p> <p>20 Q. And what were the circumstances of your</p> <p>21 departure from IMG?</p> <p>22 A. Let's see. I got kind of lazy, and I got fired.</p> <p>23 Q. What were the specific reasons given to you when</p> <p>24 you were fired from IMG?</p> <p>25 A. I kind of wasn't like pulling my weight anymore.</p>
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<p>1 A. I discussed what to expect as far as what this</p> <p>2 is all about kind of thing.</p> <p>3 Q. Did you discuss anything substantive related to</p> <p>4 IMG with Mr. Schermerhorn?</p> <p>5 A. Substantive?</p> <p>6 Q. Did you talk to him about the deposition</p> <p>7 process?</p> <p>8 A. Yes. Mostly the process. What to expect,</p> <p>9 basically, whether, you know, to be dressed up or that</p> <p>10 kind of thing.</p> <p>11 Q. Anything else?</p> <p>12 A. No.</p> <p>13 Q. I'm going to define a few terms for you that I</p> <p>14 might use today so we'll be on the same page.</p> <p>15 If I use the term "sexually-oriented material"</p> <p>16 today I will mean any material that depicts</p> <p>17 sexually-explicit conduct unless the depiction constitutes</p> <p>18 a small, insignificant part of the whole, the remainder of</p> <p>19 which is not primarily devoted to sexual matters.</p> <p>20 Do you understand this definition?</p> <p>21 A. Yes, I do.</p> <p>22 Q. And if I use the term "sexually-explicit</p> <p>23 conduct" today I will mean actual or simulated sexual</p> <p>24 intercourse including genital-genital, oral-genital,</p> <p>25 anal-genital, or oral-anal whether between persons of the</p>	<p>1 Q. Anything else?</p> <p>2 A. No. That was pretty much it.</p> <p>3 Q. And who notified you of your termination from</p> <p>4 IMG?</p> <p>5 A. Seth did.</p> <p>6 Q. Where did you go to work when you left IMG?</p> <p>7 A. I had already started a company of my own. And</p> <p>8 I'm working for myself now.</p> <p>9 Q. What does the company that you own and work for</p> <p>10 do?</p> <p>11 A. Similar things. We run pay sites and affiliate</p> <p>12 program.</p> <p>13 Q. Are the pay sites and affiliate program of your</p> <p>14 company adult entertainment?</p> <p>15 A. They are.</p> <p>16 Q. What's the name of your company?</p> <p>17 MR. APGOOD: Objection. Relevance.</p> <p>18 MR. FREEMAN: Join.</p> <p>19 A. Fly High Media.</p> <p>20 Q. And where did you work prior to working at IMG</p> <p>21 in May of 2003?</p> <p>22 MR. APGOOD: Objection. Relevance.</p> <p>23 A. I was working for another group that does a</p> <p>24 similar thing.</p> <p>25 Q. What was the name of that group?</p>

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<p style="text-align: right;">Page 10</p> <p>1 MR. APGOOD: Objection. Relevance. 2 A. On the Spot, Inc. 3 Q. What positions did you hold while you were 4 employed at IMG? 5 A. Well, I can't say we were totally formal about 6 our names, but I would say I was like a project manager 7 and -- I think project manager would probably -- is the 8 best title for what I did. 9 Q. And what were your job responsibilities as 10 project manager at IMG? 11 A. I was to try to help with the daily -- 12 day-to-day operation and I was an affiliate rep sometimes. 13 Basically, if people needed things, they would come to me 14 when Seth was unavailable. 15 Q. And what kind of things did you do to help with 16 the day-to-day operation of IMG? 17 A. What kind of things did I do? Well, I would 18 check e-mail, I'd be available online, answer phones. You 19 know, if somebody would call, I would answer the phone. I 20 would make sure that the projects we were working on were 21 organized at being worked at. 22 Q. When you say that you checked e-mail, did you 23 check e-mail from affiliates of IMG? 24 A. Sometimes when they would send me an e-mail, 25 yeah.</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. FREEMAN: Object to the form. 2 MR. APGOOD: Join. 3 A. Yes. It would be similar, actually. Similar 4 questions, you know. Somebody might have my e-mail 5 address or they might have my messenger address. However 6 they can get a hold of me. 7 Q. And you said that part of your job 8 responsibilities were to make sure projects were on track? 9 A. Uh-huh. 10 Q. What kind of projects did you work on? 11 A. Building the sites up, building, you know, 12 things that promote the site, the sites. You know, if 13 there were problems with the sites. Maybe we would have 14 to completely redo part of a site, you know, building. 15 That kind of thing. 16 Q. Were you responsible for programming aspects of 17 the database? 18 A. No, I don't -- I don't program. 19 MR. FREEMAN: Object to the form of the 20 question. 21 Q. So, when you said "building sites up," can you 22 explain what you mean? 23 A. Sometimes we'd have to add content to sites, 24 update sites. That's kind of a form of building up a 25 site.</p>
<p style="text-align: right;">Page 11</p> <p>1 Q. And what would be the reason that IMG's 2 affiliates would send e-mails -- 3 MR. APGOOD: Objection. Calls for 4 speculation. 5 Q. -- when issues would come up? 6 A. Let's see. Maybe they would ask me about a new 7 price structure or maybe they think they see a bug in our 8 system, you know, a complaint, or maybe they would ask for 9 like materials or where they could find materials to 10 promote our sites. 11 Q. So you were providing assistance to affiliates? 12 A. Yeah. 13 MR. APGOOD: Object to the form of the 14 question. 15 Q. And you said that you would be available online. 16 What did you mean by that? 17 A. We use messengers a lot in the webmaster 18 community. We use online messengers. 19 Q. So like AOL? 20 A. Yeah. That kind of thing. 21 Q. And who would you be available to? Is that to 22 affiliates? 23 A. Again, webmasters. 24 Q. And would that contact with webmasters be 25 similar to what you would do over e-mail?</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. What other projects? 2 MR. APGOOD: Object to the form of the 3 question. 4 A. Well, I think that's a pretty good 5 representation of building. I mean, maybe could you ask 6 the question again? 7 Q. Yes. Do you recall any other projects you 8 worked on as project manager for IMG? 9 A. Sometimes we would go to trade shows and I would 10 organize the trade shows and sometimes marketing online, 11 like to market our -- do a marketing push online, you 12 know. Something like that. 13 Q. These are trade shows that employees would go 14 to, is that correct? 15 A. Yes. They were like twice or three times a 16 year. Two or three times a year we would go to industry 17 trade shows, and that would have to be organized. 18 Q. And, to your knowledge, what was the purpose of 19 going to those trade shows? 20 MR. APGOOD: Objection. Calls for 21 speculation. 22 A. To meet other webmasters and have a little fun, 23 blow some steam off, and there's also seminars. 24 Q. To your knowledge, did IMG recruit affiliates at 25 the trade shows?</p>

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<p style="text-align: right;">Page 18</p> <p>1 question.</p> <p>2 MR. APGOOD: Join.</p> <p>3 A. Training? I wouldn't say training, but we were</p> <p>4 aware of it. I remember looking over a document that had</p> <p>5 the information on it. But it wasn't like, you know,</p> <p>6 prescribed reading or anything like that.</p> <p>7 Q. Do your recall who gave you the document?</p> <p>8 MR. APGOOD: Object to the question to the</p> <p>9 extent that it seeks to invade upon the attorney-client</p> <p>10 privilege.</p> <p>11 MR. FREEMAN: Join.</p> <p>12 A. I actually think that it was just sitting around</p> <p>13 kind of the office. I don't remember anyone kind of</p> <p>14 giving it to me. It's also in publications in our</p> <p>15 industry. Like a webmaster magazine. They might have had</p> <p>16 a story on it or something and I read part of it or</p> <p>17 something.</p> <p>18 Q. Were you given any written guidelines on the</p> <p>19 CAN-SPAM Act?</p> <p>20 MR. APGOOD: Object to the question to the</p> <p>21 extent that it seeks to invade the attorney-client</p> <p>22 privilege.</p> <p>23 MR. FREEMAN: Join.</p> <p>24 A. No.</p> <p>25 Q. While employed at IMG, did you ever have to make</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. APGOOD: Objection. Calls for</p> <p>2 speculation.</p> <p>3 MR. FREEMAN: Join.</p> <p>4 A. Our policy on spam? We don't accept spam into</p> <p>5 the program. It's in the terms and conditions.</p> <p>6 Q. To your knowledge while you were at IMG, was it</p> <p>7 IMG's policy that they don't accept spam anywhere else?</p> <p>8 MR. APGOOD: Object to the extent that</p> <p>9 calls for speculation.</p> <p>10 MR. FREEMAN: Join.</p> <p>11 A. Was it written anywhere? I don't remember it</p> <p>12 being written anywhere other than the terms and</p> <p>13 conditions.</p> <p>14 Q. To your knowledge while you were employed at IMG</p> <p>15 and after January 1st, 2004, did IMG allow e-mail</p> <p>16 campaigns by affiliates that were opted into?</p> <p>17 A. That were opted into? Like solicited?</p> <p>18 Q. Solicited.</p> <p>19 MR. FREEMAN: Object to the form of the</p> <p>20 question.</p> <p>21 MR. APGOOD: Object to the extent that it</p> <p>22 calls for speculation. And I join in other counsel's</p> <p>23 objection.</p> <p>24 A. I don't know of any program like that.</p> <p>25 Q. When you say you don't know of any program, can</p>
<p style="text-align: right;">Page 19</p> <p>1 judgments with respect to applying the CAN-SPAM Act?</p> <p>2 MR. FREEMAN: Object to the form of the</p> <p>3 question. Object to the extent that it violates</p> <p>4 attorney-client privilege.</p> <p>5 A. No.</p> <p>6 MR. APGOOD: I also object to the question</p> <p>7 to the extent that it calls for a legal conclusion. And I</p> <p>8 join in other counsel's objection.</p> <p>9 Q. While employed at IMG, did you ever have to</p> <p>10 determine whether an e-mail was or was not in compliance</p> <p>11 with the CAN-SPAM Act?</p> <p>12 MR. APGOOD: Objection. Calls for a legal</p> <p>13 conclusion.</p> <p>14 MR. FREEMAN: Join.</p> <p>15 A. No.</p> <p>16 Q. What does the term "spam" mean to you?</p> <p>17 A. Spam is unsolicited e-mail.</p> <p>18 Q. And the term "spammer"?</p> <p>19 A. Someone that sends unsolicited e-mail.</p> <p>20 Q. What do you base this definition on?</p> <p>21 A. Unsolicited or -- what do I base it on? Let's</p> <p>22 see. What do I base it on? From my experience in the</p> <p>23 industry.</p> <p>24 Q. While you were at IMG, what was IMG's policy</p> <p>25 regarding spam?</p>	<p style="text-align: right;">Page 21</p> <p>1 you --</p> <p>2 A. I don't know of any time that we said that this</p> <p>3 is okay, you know. Like, "I think this e-mail campaign is</p> <p>4 okay," you know.</p> <p>5 Q. While you were employed at IMG after January</p> <p>6 1st, 2004, were you aware of any affiliates using e-mail</p> <p>7 campaigns that were solicited?</p> <p>8 A. Was I aware? No. No.</p> <p>9 Q. To your knowledge, did IMG have a written policy</p> <p>10 that affiliates could not use any e-mail campaigns even if</p> <p>11 they were solicited?</p> <p>12 A. In the terms and conditions?</p> <p>13 MR. APGOOD: Object to the question to the</p> <p>14 extent it calls for speculation.</p> <p>15 Q. Did IMG do anything to monitor affiliates to</p> <p>16 make sure that they weren't sending e-mails in violation</p> <p>17 of CAN-SPAM?</p> <p>18 MR. APGOOD: Object to the form of the</p> <p>19 question. Object to the extent it calls for speculation.</p> <p>20 MR. FREEMAN: Join.</p> <p>21 A. Did we monitor -- did we do anything to monitor?</p> <p>22 I don't -- no. I would say -- I would say no.</p> <p>23 Q. To your knowledge while you were employed at</p> <p>24 IMG, did IMG have any mechanisms in place to prevent</p> <p>25 affiliates from sending e-mails in violation of CAN-SPAM?</p>

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<p>1 MR. APGOOD: Object to the question to the 2 extent it calls for speculation. Object to the question 3 to the extent that it implies such a duty even existed. 4 MR. FREEMAN: Join. 5 A. I don't know of anything that we could do to 6 stop somebody. So I don't think we had anything in place, 7 no. 8 Q. Does IMG's affiliate program have a name? 9 A. Yes. 10 Q. What is it? 11 A. SoulCash. 12 Q. And can you describe SoulCash? 13 MR. APGOOD: Object to the form of the 14 question. 15 A. SoulCash is an affiliate program in which you're 16 able to promote our sites -- or IMG's sites. 17 Q. And the affiliate's program, IMG's websites? 18 MR. APGOOD: Object to the form of the 19 question. 20 MR. FREEMAN: Join. 21 A. What was the question? 22 Q. I believe you said an affiliate program in 23 which -- 24 A. You can promote IMG's pay sites. 25 Q. And when you say "you," is that --</p>	<p>1 affiliate program. 2 MR. APGOOD: At this point in time, I'd 3 like to instruct the witness as to guessing on answers to 4 questions and request that he not guess as to answers. 5 And, for the record, I want to establish, for his 6 knowledge, the distinction between an estimation and a 7 guess. 8 THE DEPONENT: Right. 9 MR. APGOOD: If I were to ask you today, 10 Sir, to tell me what the dimensions of this table are that 11 we're sitting at, based upon your life experience, you 12 could look at it and make an estimation because you have 13 experience that would allow you to do so and knowing, you 14 know, width and length, whereas, if I were to ask you what 15 the size of the table in my office is, you would 16 necessarily have to guess because you have never seen that 17 table. 18 THE DEPONENT: That's true. 19 MR. APGOOD: I will ask you, Sir, please, 20 to testify as to what you actually know, or where 21 relevant, if you can make an estimation based upon your 22 knowledge and experience. You're certainly entitled to do 23 that. But I will please ask you, Sir, do not guess at an 24 answer because that is not evidence and it's not knowledge 25 on your part. Thank you very much.</p>
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<p>1 A. You. The royal you. Anybody. 2 Q. What is their relationship between IMG and 3 SoulCash? 4 MR. APGOOD: Objection. Calls for 5 speculation. 6 A. I believe it's owned -- SoulCash is owned by 7 IMG. 8 Q. Do you use the terms "IMG" and "SoulCash" 9 interchangeably? 10 A. No. 11 Q. How do they differ? 12 MR. APGOOD: Object to the form of the 13 question. 14 A. SoulCash is a website. It's a program. And 15 Impulse Media Group is a company. They're not the same 16 thing. 17 Q. What is mixbucks.com? 18 MR. FREEMAN: Sorry? 19 MS. HASH: Mixbucks. 20 A. How do you spell it? 21 Q. M-I-X-B-U-C-K-S. 22 A. I believe that would be the affiliate program 23 for -- to promote -- I forget the name of that site. It 24 was -- it was a mixed -- I don't know. I have never 25 actually seen Mixbucks, but I'm guessing that it was an</p>	<p>1 Q. Can you tell me what you do know about 2 mixbucks.com. 3 A. I actually don't know anything about Mixbucks. 4 I have never seen it, so I can't say that I know anything 5 about it. 6 Q. Do you have knowledge that it is an affiliate 7 program of IMG? 8 MR. APGOOD: Objection. He's already 9 testified he doesn't know what the program is. 10 A. I actually can't say I do have that knowledge. 11 I don't. 12 Q. To your knowledge, do all of IMG's websites 13 contain sexually-oriented materials? 14 A. Do all of them? No. I think that they don't 15 all. 16 Q. Is IMG involved in business areas other than 17 adult entertainment? 18 A. Currently, no, but in the past, maybe. 19 Q. Does the SoulCash affiliate program promote 20 products other than those in the adult entertainment 21 industry? 22 MR. APGOOD: Object to the extent that it 23 calls for speculation. Object to the form of the 24 question. 25 MR. FREEMAN: Join.</p>

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<p style="text-align: right;">Page 30</p> <p>1 MR. APGOOD: Object to the form of the</p> <p>2 question.</p> <p>3 MR. FREEMAN: Join.</p> <p>4 A. Sometimes it is possible to see where the</p> <p>5 advertising is.</p> <p>6 Q. And how does that work?</p> <p>7 MR. APGOOD: Object to the form of the</p> <p>8 question.</p> <p>9 A. The software sometimes can tell which page the</p> <p>10 surfer was on before he or her -- he or she, rather,</p> <p>11 joined the site.</p> <p>12 Q. And you say sometimes.</p> <p>13 A. Sometimes that information isn't captured --</p> <p>14 MR. APGOOD: Object to the form of the</p> <p>15 question.</p> <p>16 A. Sometimes that information isn't captured by the</p> <p>17 software. It's not perfect.</p> <p>18 Q. Can IMG tell if a new member is directed to an</p> <p>19 IMG website through an e-mail?</p> <p>20 MR. APGOOD: Objection. Calls for</p> <p>21 speculation.</p> <p>22 MR. FREEMAN: Join.</p> <p>23 A. Not really. An e-mail is extremely hard.</p> <p>24 Q. So when you say "not really," can you elaborate?</p> <p>25 MR. APGOOD: Object to the form of the</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Any particular URLs that would indicate it might</p> <p>2 be from an e-mail?</p> <p>3 MR. APGOOD: Object. It calls for</p> <p>4 speculation. Object to the form of the question.</p> <p>5 MR. FREEMAN: Join.</p> <p>6 A. I really feel like I am speculating. I don't</p> <p>7 really know. Like I don't think that -- I don't think</p> <p>8 there's one ULR that would show up and you'd go, "Oh,</p> <p>9 that's from an e-mail."</p> <p>10 MR. APGOOD: Please don't speculate, Sir.</p> <p>11 Q. How does someone become an affiliate of IMG?</p> <p>12 MR. APGOOD: Object. It calls for</p> <p>13 speculation.</p> <p>14 Q. When I ask you a question, I'm asking you to</p> <p>15 answer based on your personal knowledge because that's all</p> <p>16 you know.</p> <p>17 Do you understand?</p> <p>18 A. Right. I do. How does someone become -- they</p> <p>19 sign up. They give us their information.</p> <p>20 Q. And what information does a potential affiliate</p> <p>21 have to provide to IMG in the sign-up process?</p> <p>22 A. Address, domain, e-mail address, social</p> <p>23 security, or tax ID. That's about it.</p> <p>24 Q. When you say "domain," what do you mean?</p> <p>25 A. Well, it asks for them to give their domain when</p>
<p style="text-align: right;">Page 31</p> <p>1 question.</p> <p>2 A. It might be possible to -- not from an e-mail.</p> <p>3 I'll just say no on that. You can't.</p> <p>4 Q. If a new member comes from a website that IMG</p> <p>5 can track, say Yahoo.com, would that be an indication that</p> <p>6 that new member had come through an e-mail sent by an</p> <p>7 affiliate?</p> <p>8 MR. APGOOD: Objection. Calls for</p> <p>9 speculation.</p> <p>10 MR. FREEMAN: Object to the form of the</p> <p>11 question.</p> <p>12 MR. APGOOD: Join.</p> <p>13 A. From Yahoo? I don't think that alone would tell</p> <p>14 you that it came from an e-mail.</p> <p>15 Q. Are there any referring URLs that might tell you</p> <p>16 that a new member had come through an e-mail?</p> <p>17 MR. APGOOD: Objection. Form of the</p> <p>18 question.</p> <p>19 MR. FREEMAN: Join.</p> <p>20 MR. APGOOD: Objection. Calls for</p> <p>21 speculation.</p> <p>22 MR. FREEMAN: Join.</p> <p>23 A. Not any particular URL. No. There's no</p> <p>24 particular URL that could tell you that this was an</p> <p>25 e-mail.</p>	<p style="text-align: right;">Page 33</p> <p>1 they come in. Like whatever their main domain might be.</p> <p>2 Q. What's the purpose of asking for that</p> <p>3 information?</p> <p>4 MR. APGOOD: Objection. Calls for</p> <p>5 speculation.</p> <p>6 MR. FREEMAN: Join.</p> <p>7 A. I would think it's to -- like to know who's</p> <p>8 signing up, kind of. Like who -- if a big webmaster comes</p> <p>9 and signs up, then they put a big name on that particular</p> <p>10 line. That might tell us that somebody big signed up, you</p> <p>11 know.</p> <p>12 Q. Does IMG do anything to verify the physical</p> <p>13 address provided by affiliates?</p> <p>14 MR. FREEMAN: Object to the form of the</p> <p>15 question.</p> <p>16 MR. APGOOD: Join.</p> <p>17 A. To the physical address? No. That's not</p> <p>18 verified.</p> <p>19 Q. Is an affiliate automatically approved if they</p> <p>20 submit the sign-up information that you just described?</p> <p>21 MR. FREEMAN: Object to the form of the</p> <p>22 question.</p> <p>23 A. Are they? Yes, they are.</p> <p>24 MR. APGOOD: Join.</p> <p>25 A. I would say they are.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Q. Did you have direct contact with affiliates</p> <p>2 while you were employed at IMG?</p> <p>3 A. Sometimes at trade shows I would have direct</p> <p>4 contact.</p> <p>5 Q. And did you have contact by, I believe you said</p> <p>6 e-mail earlier, is that correct?</p> <p>7 A. Yeah. Yeah. By "direct" I thought you meant</p> <p>8 physical contact, but, yeah. I would speak with</p> <p>9 affiliates online and in person.</p> <p>10 Q. To your knowledge, what kind of services does</p> <p>11 IMG provide to affiliates to help them promote IMG's</p> <p>12 websites?</p> <p>13 MR. FREEMAN: Object to the form of the</p> <p>14 question and foundation.</p> <p>15 MR. APGOOD: Objection to the extent it</p> <p>16 calls for speculation. And join other counsel's</p> <p>17 objections.</p> <p>18 A. Could you repeat the question?</p> <p>19 Q. What things does IMG do to help affiliates</p> <p>20 promote IMG's websites?</p> <p>21 MR. APGOOD: Same objections.</p> <p>22 MR. FREEMAN: Same.</p> <p>23 A. Give them promotional tools.</p> <p>24 Q. What kind of promotional tools?</p> <p>25 MR. APGOOD: Object to the form of the</p>	<p style="text-align: right;">Page 36</p> <p>1 Q. And you mentioned promotional content as a</p> <p>2 promotional tool that IMG provides to affiliates.</p> <p>3 Can you explain?</p> <p>4 MR. APGOOD: Objection. There's no</p> <p>5 question pending.</p> <p>6 A. Let's see. Promotional content, like if someone</p> <p>7 has -- if they want to build their own galleries, we can</p> <p>8 give them content to build those galleries.</p> <p>9 Q. Any other promotional tools that you're aware of</p> <p>10 that IMG provides to affiliates?</p> <p>11 MR. FREEMAN: Object to the form of the</p> <p>12 question.</p> <p>13 MR. APGOOD: Join.</p> <p>14 A. I don't think so. I think that's pretty much</p> <p>15 most of it.</p> <p>16 Q. To your knowledge, is it possible for affiliates</p> <p>17 to use these promotional materials, free-hosted galleries,</p> <p>18 banners, and promotional content in an e-mail to promote</p> <p>19 IMG's websites?</p> <p>20 MR. FREEMAN: Object to the form of the</p> <p>21 question to the extent it calls for speculation.</p> <p>22 MR. APGOOD: Join.</p> <p>23 A. Is it possible? It is possible to use those.</p> <p>24 Q. To your knowledge, does anyone at IMG regularly</p> <p>25 ask affiliates what kind of promotional tools they're</p>
<p style="text-align: right;">Page 35</p> <p>1 question.</p> <p>2 A. Free-hosted galleries, banners, sometimes</p> <p>3 promotional content. That would be the -- pretty much the</p> <p>4 gist of it.</p> <p>5 Q. And what are free-hosted galleries?</p> <p>6 A. They are galleries of sample content that are</p> <p>7 hosted by us -- by IMG, or SoulCash, in this case.</p> <p>8 Like that webmasters can link to without using any of</p> <p>9 their own band --</p> <p>10 Q. And how would a webmaster link to? In an</p> <p>11 advertisement or --</p> <p>12 MR. FREEMAN: Object to the form of the</p> <p>13 question.</p> <p>14 MR. APGOOD: Object. It calls for</p> <p>15 speculation.</p> <p>16 A. From their site, they might link to a gallery,</p> <p>17 one of our promotional galleries using a hyperlink.</p> <p>18 Q. And when you say "banners," what do you mean by</p> <p>19 banners?</p> <p>20 A. Banners are advertisements that are just images.</p> <p>21 Q. Electronic?</p> <p>22 MR. APGOOD: Object to the form of the</p> <p>23 question.</p> <p>24 A. Yeah. They're not like physical banners. It's</p> <p>25 definitely electronic.</p>	<p style="text-align: right;">Page 37</p> <p>1 using?</p> <p>2 MR. FREEMAN: Object to the form of the</p> <p>3 question and foundation.</p> <p>4 MR. APGOOD: Join.</p> <p>5 A. I don't think so.</p> <p>6 Q. Did you ever ask an affiliate what kind of</p> <p>7 promotional tools they were using?</p> <p>8 A. I might have asked somebody if they were running</p> <p>9 our hosted galleries or something like that.</p> <p>10 MR. APGOOD: I will again ask the witness</p> <p>11 not to guess. If you have knowledge and recollection of</p> <p>12 specific events, you can testify to that, but please do</p> <p>13 not speculate.</p> <p>14 A. I don't have any set recollection of saying</p> <p>15 that, but, you know, it might have come up.</p> <p>16 MR. APGOOD: Again, I will ask the witness</p> <p>17 please do not speculate. Please testify only as to your</p> <p>18 knowledge and recollection.</p> <p>19 Q. Would it be possible for IMG to ask affiliates</p> <p>20 what kind of promotional tools they're using?</p> <p>21 MR. APGOOD: Objection. Calls for</p> <p>22 speculation.</p> <p>23 MR. FREEMAN: Join.</p> <p>24 A. Sure, it would be possible.</p> <p>25 Q. Does IMG ever provide custom promotional tools</p>

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<p style="text-align: right;">Page 42</p> <p>1 MR. APGOOD: Join.</p> <p>2 A. I don't recall any particular searches looking</p> <p>3 for just number of sales. I don't recall any that were</p> <p>4 like that.</p> <p>5 Q. Did IMG ever send out information on a</p> <p>6 particular bonus program to a certain group of affiliates?</p> <p>7 For example, bonus program to its top affiliates.</p> <p>8 A. To its --</p> <p>9 MR. APGOOD: Objection. Calls for</p> <p>10 speculation.</p> <p>11 MR. FREEMAN: Join.</p> <p>12 A. I don't -- no. I don't remember a promotion</p> <p>13 like that.</p> <p>14 Q. Are IMG affiliates assigned a unique linking</p> <p>15 code?</p> <p>16 MR. FREEMAN: I'm going to object to the</p> <p>17 form of the question.</p> <p>18 MR. APGOOD: Join.</p> <p>19 A. They have a unique ID user. User ID. User</p> <p>20 name.</p> <p>21 Q. Are you familiar with the term in the SoulCash</p> <p>22 program "gallery link creator"?</p> <p>23 A. Yes.</p> <p>24 Q. Can you explain what that is?</p> <p>25 A. It's a script inside SoulCash that makes it a</p>	<p style="text-align: right;">Page 44</p> <p>1 website?</p> <p>2 MR. APGOOD: Objection. That really calls</p> <p>3 for speculation.</p> <p>4 A. They can put it on their website.</p> <p>5 Q. So is the affiliate included in the advertising</p> <p>6 that it was using to promote IMG's websites?</p> <p>7 MR. APGOOD: Objection. Calls for</p> <p>8 speculation. You're really reaching, Counsel.</p> <p>9 A. What was the question?</p> <p>10 Q. Yes. Do affiliates create these links to then</p> <p>11 put them in advertisements that they use to promote IMG's</p> <p>12 website?</p> <p>13 MR. APGOOD: Objection. Calls for</p> <p>14 speculation. Counsel, please.</p> <p>15 MR. FREEMAN: Join.</p> <p>16 A. I don't think that, in particular -- I mean,</p> <p>17 they would use it to advertise, but not -- I wouldn't say</p> <p>18 that the gallery creator is -- they're not going to use</p> <p>19 those links on advertising. They're going to use those</p> <p>20 links to give sample content off their website. Like --</p> <p>21 it is a form of advertising, yeah.</p> <p>22 Q. And if an affiliate uses one of these links to</p> <p>23 give sample content, if a surfer out there clicks on the</p> <p>24 link, what happens?</p> <p>25 MR. APGOOD: Objection. Calls for</p>
<p style="text-align: right;">Page 43</p> <p>1 quick process to get links to galleries.</p> <p>2 Q. And it makes it a quick process for affiliates</p> <p>3 to get links to galleries?</p> <p>4 A. Yes.</p> <p>5 MR. APGOOD: Object to the form of the</p> <p>6 question.</p> <p>7 Q. And how does the gallery link creator program</p> <p>8 work?</p> <p>9 A. How does it work? You can choose different</p> <p>10 options and it will -- then you press a button and it</p> <p>11 spits out the links that you requested by the pull-down</p> <p>12 menu.</p> <p>13 Q. And would the links it creates include the</p> <p>14 affiliate's unique user ID?</p> <p>15 A. Yeah, it would.</p> <p>16 Q. And why would it do that?</p> <p>17 MR. APGOOD: Objection. Calls for</p> <p>18 speculation.</p> <p>19 MR. FREEMAN: Join.</p> <p>20 A. Because to access that area you would have had</p> <p>21 to have logged in, and so you would be logged in as you</p> <p>22 were using this creator as the user name that you logged</p> <p>23 in as.</p> <p>24 Q. Okay. And, to your knowledge, how would an</p> <p>25 affiliate then use this link they created to promote IMG's</p>	<p style="text-align: right;">Page 45</p> <p>1 speculation.</p> <p>2 Counsel, I'm going to caution you about asking</p> <p>3 more and more questions that request speculation on the</p> <p>4 part of the witness to the extent that you are</p> <p>5 unnecessarily multiplying proceedings, all a violation of</p> <p>6 28 USC 1927. Please be so advised.</p> <p>7 Q. IMG creates these links for a purpose, right?</p> <p>8 A. Right.</p> <p>9 Q. What's the purpose?</p> <p>10 MR. APGOOD: Objection. Calls for</p> <p>11 speculation.</p> <p>12 MR. FREEMAN: Join.</p> <p>13 A. The purpose is to bring in more and more traffic</p> <p>14 to the pay sites.</p> <p>15 Q. Thank you.</p> <p>16 To your knowledge, who sets the rates at which</p> <p>17 IMG's affiliates are paid?</p> <p>18 A. Seth is the decision maker.</p> <p>19 Q. And, to your knowledge, are affiliates paid</p> <p>20 different amounts depending on the number of sales they</p> <p>21 bring in?</p> <p>22 A. They are paid differently for different</p> <p>23 programs.</p> <p>24 Q. What are the different programs?</p> <p>25 A. They can get paid per join or they can get paid</p>

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<p style="text-align: right;">Page 46</p> <p>1 on a rev share basis, which is a percentage basis.</p> <p>2 Q. Any other programs?</p> <p>3 A. There were promos sometimes. Certain join</p> <p>4 prices for certain days.</p> <p>5 Q. Are you familiar with an IMG bonus, a whale</p> <p>6 bonus?</p> <p>7 MR. FREEMAN: Can your repeat that?</p> <p>8 Q. Yes. Are you familiar what an IMG bonus, a</p> <p>9 whale bonus?</p> <p>10 A. A whale bonus? Yes. That's when they would</p> <p>11 bring in I think it was ten sales or more, they would get</p> <p>12 a bonus.</p> <p>13 Q. When you say "they," you mean the affiliate?</p> <p>14 A. The affiliate, yeah.</p> <p>15 Q. When you left IMG, how many affiliates did IMG</p> <p>16 have?</p> <p>17 MR. APGOOD: Objection. Calls for</p> <p>18 speculation. He can answer to the extent that he knows.</p> <p>19 MR. FREEMAN: Join.</p> <p>20 A. I have no idea. I couldn't guess.</p> <p>21 Q. While you were at IMG, who else had contact with</p> <p>22 affiliates?</p> <p>23 MR. APGOOD: Objection. Calls for</p> <p>24 speculation.</p> <p>25 MR. FREEMAN: Join.</p>	<p style="text-align: right;">Page 48</p> <p>1 A. Okay.</p> <p>2 Q. Information to become an affiliate. Is there</p> <p>3 anyone who oversaw that process?</p> <p>4 MR. APGOOD: Object to the extent that it</p> <p>5 mischaracterizes prior testimony of the witness.</p> <p>6 Q. Or was it just automatic?</p> <p>7 A. It was automatic. I mean --</p> <p>8 Q. And, to your knowledge, did IMG ever terminate</p> <p>9 an affiliate for sending spam?</p> <p>10 MR. FREEMAN: Objection. Foundation.</p> <p>11 A. For sending spam, no. Not to my knowledge.</p> <p>12 Q. To your knowledge, while you were employed at</p> <p>13 IMG, did IMG promote its own websites outside of the</p> <p>14 affiliate program?</p> <p>15 A. Well, there were some free sites that might have</p> <p>16 had some SoulCash content up on.</p> <p>17 MR. APGOOD: Again, I will please ask the</p> <p>18 witness not to speculate. If he has specific knowledge or</p> <p>19 recollection, he can testify to that. Please do not</p> <p>20 guess.</p> <p>21 A. I think that we did have a free site that had --</p> <p>22 I'm pretty sure that we had a free site with SoulCash</p> <p>23 stuff up on it.</p> <p>24 Q. To your knowledge, did IMG promote its website</p> <p>25 through e-mail?</p>
<p style="text-align: right;">Page 47</p> <p>1 A. I believe everyone had some sort of contact with</p> <p>2 affiliates.</p> <p>3 Q. If a complaint came in about an affiliate</p> <p>4 sending spam, to your knowledge, who would handle that</p> <p>5 complaint?</p> <p>6 MR. APGOOD: Objection. Calls for</p> <p>7 speculation.</p> <p>8 MR. FREEMAN: Object based on foundation.</p> <p>9 Q. To your knowledge, did IMG ever receive any</p> <p>10 complaint about an affiliate sending spam?</p> <p>11 MR. APGOOD: Object to the extent it calls</p> <p>12 for speculation.</p> <p>13 A. I don't know of any complaints.</p> <p>14 Q. And, to your knowledge, who provided webmaster</p> <p>15 support to affiliates while you were employed at IMG?</p> <p>16 A. I think I would, Seth would, sometimes Deepai</p> <p>17 would, too.</p> <p>18 Q. And who was responsible for the affiliates'</p> <p>19 sign-up process?</p> <p>20 MR. FREEMAN: Object to the form of the</p> <p>21 question.</p> <p>22 A. The affiliate sign-up process? What do you</p> <p>23 mean, exactly, by that?</p> <p>24 Q. Well, earlier, you testified about a form an</p> <p>25 affiliate had to fill out.</p>	<p style="text-align: right;">Page 49</p> <p>1 A. No.</p> <p>2 Q. Did IMG use paid advertising to promote its</p> <p>3 website?</p> <p>4 MR. APGOOD: Objection. Calls for</p> <p>5 speculation.</p> <p>6 MR. FREEMAN: I'm going to object to the</p> <p>7 extent the questions are asked and answered.</p> <p>8 A. Paid advertisements. We did pay for gallery</p> <p>9 spots. Some.</p> <p>10 Q. Can you explain what you mean?</p> <p>11 A. You can buy spots on free sites to promote -- to</p> <p>12 promote your sites.</p> <p>13 Q. To your knowledge, did IMG use paid</p> <p>14 advertisements to attract affiliates to the SoulCash</p> <p>15 program?</p> <p>16 MR. APGOOD: Object to the extent it calls</p> <p>17 for speculation.</p> <p>18 A. Sometimes we would sponsor parties that would</p> <p>19 hopefully encourage people to promote the program.</p> <p>20 Q. Anything else?</p> <p>21 MR. FREEMAN: Object to the form of the</p> <p>22 question.</p> <p>23 Q. Anything else IMG did to attract new affiliates</p> <p>24 that you haven't mentioned?</p> <p>25 MR. APGOOD: Objection. Calls for</p>

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<p style="text-align: right;">Page 50</p> <p>1 speculation.</p> <p>2 MR. FREEMAN: And I object to the form of</p> <p>3 the question.</p> <p>4 A. I can't think of any paid advertisements that we</p> <p>5 had.</p> <p>6 MR. FREEMAN: Can we take a short break?</p> <p>7 (Break.)</p> <p>8 Q. Say a potential new member comes to an IMG</p> <p>9 website, how does the subscription process for a new</p> <p>10 member work?</p> <p>11 MR. APGOOD: Objection to the extent it</p> <p>12 calls for speculation.</p> <p>13 A. You're talking about a surfer? Is that what</p> <p>14 you're asking?</p> <p>15 Q. Surfer, yes.</p> <p>16 MR. APGOOD: Same objection.</p> <p>17 A. They would hopefully end up at a join form, and</p> <p>18 they would have been sold on the website, and they would</p> <p>19 buy a membership.</p> <p>20 Q. And does a surfer have to enter any information</p> <p>21 in the join form to buy a membership?</p> <p>22 A. Sure. Yeah.</p> <p>23 Q. What kind of information?</p> <p>24 A. Their address and credit card number, desired</p> <p>25 user name and password.</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. And is e-passport a method whereby new members</p> <p>2 can pay for subscriptions?</p> <p>3 A. I don't believe so.</p> <p>4 MR. FREEMAN: I'm going to object to the</p> <p>5 form of the question.</p> <p>6 Q. Does IMG ask new members how they got to IMG's</p> <p>7 website?</p> <p>8 MR. APGOOD: Objection. Calls for</p> <p>9 speculation.</p> <p>10 A. No.</p> <p>11 Q. To your knowledge, has IMG considered asking new</p> <p>12 members how they got to IMG's website?</p> <p>13 MR. FREEMAN: I'm going to object to the</p> <p>14 form of the question.</p> <p>15 MR. APGOOD: Join.</p> <p>16 A. I don't believe it's ever been thought of.</p> <p>17 Q. To your knowledge, would it be possible for IMG</p> <p>18 to ask new members how they got to IMG's website?</p> <p>19 MR. APGOOD: Objection. Calls for</p> <p>20 speculation.</p> <p>21 I'm also going to caution counsel about</p> <p>22 exploring areas of questioning that have absolutely</p> <p>23 nothing to do with the claims brought by the plaintiff in</p> <p>24 its complaint nor are they reasonably calculated to lead</p> <p>25 to admissible evidence that would support the plaintiff's</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. And does a new member have to choose a different</p> <p>2 term of subscription?</p> <p>3 MR. APGOOD: Objection. Calls for</p> <p>4 speculation.</p> <p>5 A. Yes. They would have to decide if they want to</p> <p>6 do a trial or if they want to go ahead and buy a</p> <p>7 membership.</p> <p>8 Q. And, to your knowledge while you were employed</p> <p>9 at IMG, did any of IMG's join pages have drop-down menus</p> <p>10 for entering this information?</p> <p>11 MR. APGOOD: Objection. Relevance.</p> <p>12 A. I actually don't remember if they have drop-down</p> <p>13 menus or not because there are several ways that it can be</p> <p>14 done.</p> <p>15 Q. And, to your knowledge, what methods can new</p> <p>16 members use to pay for their subscription?</p> <p>17 A. They can pay by credit card or I believe an</p> <p>18 online check. I think that's it.</p> <p>19 Q. Do you know what an e-passport is?</p> <p>20 A. Yes.</p> <p>21 Q. Can you explain?</p> <p>22 MR. APGOOD: Object to the form of the</p> <p>23 question.</p> <p>24 A. An e-passport is a European-based company. It's</p> <p>25 like specialized online banking.</p>	<p style="text-align: right;">Page 53</p> <p>1 claim. And, indeed, what they're reasonably calculated to</p> <p>2 do is to create a basis for demands of settlement that the</p> <p>3 plaintiff will probably be bringing in order to resolve</p> <p>4 this issue absent trial, and, therefore, is wholly</p> <p>5 inappropriate for deposition purposes which is a</p> <p>6 fact-finding process.</p> <p>7 MR. FREEMAN: And I'm going to object to</p> <p>8 the form of the question.</p> <p>9 A. I'm sure it is possible.</p> <p>10 Q. To your knowledge, since January 1st, 2004, has</p> <p>11 IMG ever required affiliates to send samples of e-mails</p> <p>12 they will be using to promote IMG's website?</p> <p>13 MR. FREEMAN: Object. Foundation.</p> <p>14 A. No.</p> <p>15 Q. To your knowledge, since May of 2004, has IMG</p> <p>16 provided affiliates with sample e-mails that are in</p> <p>17 compliance with the CAN-SPAM Act and adult labeling law?</p> <p>18 MR. APGOOD: Object to the extent it calls</p> <p>19 for a legal conclusion.</p> <p>20 MR. FREEMAN: And I'm going to object based</p> <p>21 on foundation.</p> <p>22 A. No.</p> <p>23 Q. Did IMG have affiliates prior to January 1st,</p> <p>24 2004?</p> <p>25 MR. APGOOD: Objection to the extent that</p>

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<p style="text-align: right;">Page 54</p> <p>1 calls for speculation. 2 A. Yes. 3 Q. To your knowledge, did IMG require its existing 4 affiliates to review the CAM-SPAM law when it went into 5 effect? 6 MR. APGOOD: Objection to the extent it 7 calls for a legal conclusion. 8 MR. FREEMAN: Join. 9 A. To my knowledge, no, they did not. 10 Q. To your knowledge, did IMG ever receive 11 complaints regarding e-mail campaigns by affiliates? 12 MR. APGOOD: Object to the extent that it 13 calls for speculation. 14 A. Not to my knowledge. 15 Q. And you testified previously that you're not 16 aware of any complaint IMG received regarding spam by 17 affiliates, is that correct? 18 MR. APGOOD: Object to the form of the 19 question. 20 A. That is correct. 21 MR. APGOOD: Please read back the response. 22 (The answer was read.) 23 Q. To your knowledge, did IMG have any mechanism 24 set up to receive complaints regarding spam or e-mail by 25 affiliates?</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. FREEMAN: Join. 2 Q. You previously testified that to your knowledge, 3 IMG never terminated an affiliate for promoting IMG's 4 website through spam, is that correct? 5 MR. APGOOD: Objection to the extent that 6 it mischaracterizes former testimony by the witness. 7 A. That's correct. 8 Q. Are you aware of any other action taken by IMG 9 against an affiliate for sending spam -- 10 MR. FREEMAN: Object to the form of the 11 question. 12 Q. -- promoting IMG's website? 13 A. I'm not aware of anything. 14 Q. Are you aware of IMG ever terminating an 15 affiliate? 16 MR. APGOOD: Objection. Asked and 17 answered. Objection to the form of the question. 18 Q. Are you aware of IMG ever terminating an 19 affiliate for any reason? 20 A. Yes. 21 MR. APGOOD: Same objection. 22 Q. And what reasons are you aware of IMG 23 terminating an affiliate for? 24 MR. FREEMAN: Object to the form of the 25 question.</p>
<p style="text-align: right;">Page 55</p> <p>1 MR. APGOOD: Object to the extent that it 2 calls for speculation. 3 MR. FREEMAN: I object to the form of the 4 question. 5 A. Was there anything set up? Is that the 6 question? 7 Q. Yes. 8 MR. APGOOD: Same objection. 9 A. Not that I'm aware of, no. I mean, e-mail 10 addresses, of course, but, you know. 11 Q. What do you mean by that, e-mail addresses? 12 A. There are e-mail addresses available online. 13 Q. I'm not sure I follow you. Can you -- 14 MR. APGOOD: Object to the form of the 15 question. There's no question pending. 16 Q. Can you explain further what you meant by their 17 e-mail addresses online? 18 A. Well, if I had a problem with somebody, I would 19 look for an e-mail address to write. That's what I would 20 do. 21 Q. To your knowledge, did IMG have a specific 22 e-mail account set up to receive complaints? 23 A. Not to my knowledge. 24 MR. APGOOD: Object to the question to the 25 extent it calls for speculation.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Sometimes fraud. We would catch fraud. 2 Q. Anything else? 3 MR. FREEMAN: Object to the form of the 4 question. 5 MR. APGOOD: Join. 6 A. That's the main one. 7 Q. Did IMG have any mechanisms in place to catch 8 fraud by its affiliates? 9 MR. FREEMAN: Object to the form of the 10 question. 11 MR. APGOOD: Objection. Asked and 12 answered. 13 A. I would catch people sometimes if their 14 statistics looked suspicious. 15 Q. When you caught those people, what about their 16 statistics was suspicious to you? 17 MR. APGOOD: Object to the form of the 18 question. 19 MR. FREEMAN: Join. 20 A. Like the conversion would be extremely low. 21 Q. Anything else? 22 MR. FREEMAN: Object to the form. 23 A. That's the big thing, the big flag, that their 24 conversions would be unreasonable. 25 Q. Did you ever personally terminate an affiliate?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. Yes.</p> <p>2 Q. What did you do to terminate the affiliate?</p> <p>3 A. In our software, I can just turn their accounts</p> <p>4 off.</p> <p>5 Q. How do you do that?</p> <p>6 MR. APGOOD: Object to the form of the</p> <p>7 question.</p> <p>8 A. I just move the toggle in the software and they</p> <p>9 can be terminated.</p> <p>10 Q. Does the toggle have a label?</p> <p>11 A. I believe it says "Active" or "Terminated."</p> <p>12 Q. And when you personally terminated IMG's</p> <p>13 affiliate, did you have to get permission to do that?</p> <p>14 A. No, not necessarily. But there were established</p> <p>15 protocols with Seth. Seth was the one that kind of set</p> <p>16 the protocols. I would say most times I did have to get</p> <p>17 his permission to do that.</p> <p>18 Q. To your knowledge, since January 1st, 2004, have</p> <p>19 any of IMG's affiliates promoted IMG's website through</p> <p>20 bulk e-mail?</p> <p>21 MR. APGOOD: Objection to the extent that</p> <p>22 it calls for a legal conclusion. Object to the form of</p> <p>23 the question. Object to the extent it calls for</p> <p>24 speculation.</p> <p>25 MR. FREEMAN: Join.</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Does IMG run any kind of scan to match</p> <p>2 information that new affiliates are submitting against the</p> <p>3 information that that affiliate could have been</p> <p>4 terminated?</p> <p>5 MR. APGOOD: Objection. Calls for</p> <p>6 speculation.</p> <p>7 MR. FREEMAN: Object to the form of the</p> <p>8 question.</p> <p>9 A. There's no formal scan, no.</p> <p>10 Q. And you said that IMG might catch it if the</p> <p>11 affiliate enters information that matches that of a</p> <p>12 terminated affiliate, but if an affiliate signs up with</p> <p>13 completely new information, does IMG have any way of</p> <p>14 determining that the affiliate had been previously</p> <p>15 terminated?</p> <p>16 MR. APGOOD: Objection. Calls for</p> <p>17 speculation.</p> <p>18 MR. FREEMAN: Object to the form.</p> <p>19 A. No. I think that they could easily get away</p> <p>20 with that, probably, if they used completely new info.</p> <p>21 Q. You testified previously that IMG does not allow</p> <p>22 affiliates to use e-mail campaigns even if they are</p> <p>23 solicited, is this correct?</p> <p>24 MR. FREEMAN: Object to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">Page 59</p> <p>1 A. Not to my knowledge.</p> <p>2 Q. And, to your knowledge, have any of IMG's</p> <p>3 affiliates promoted IMG's websites through bulk</p> <p>4 unsolicited e-mail?</p> <p>5 MR. APGOOD: Same objection.</p> <p>6 MR. FREEMAN: Join.</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. You testified previously about an affiliate</p> <p>9 sign-up process.</p> <p>10 If an affiliate is terminated and then goes</p> <p>11 through the sign-up process again and there's completely</p> <p>12 new information, does IMG have any way of knowing that the</p> <p>13 affiliate had been previously terminated?</p> <p>14 MR. APGOOD: Objection to the form of the</p> <p>15 question. And objection, calls for speculation.</p> <p>16 MR. FREEMAN: Join.</p> <p>17 A. They could sign up again, but if we took note of</p> <p>18 the company name previously, then we might catch the</p> <p>19 company name again.</p> <p>20 Q. And how would you catch that?</p> <p>21 MR. APGOOD: Object to the form of the</p> <p>22 question.</p> <p>23 MR. FREEMAN: Join.</p> <p>24 A. Maybe if we saw that there was a check going out</p> <p>25 to a company, that same company again.</p>	<p style="text-align: right;">Page 61</p> <p>1 MR. APGOOD: Join.</p> <p>2 A. This is correct, yes.</p> <p>3 Q. And you testified that this policy regarding</p> <p>4 affiliates not being allowed to use e-mail campaigns, even</p> <p>5 if they are solicited, is in IMG's terms and conditions</p> <p>6 for affiliates, is that correct?</p> <p>7 MR. FREEMAN: Object to the extent that</p> <p>8 that mischaracterizes his prior testimony.</p> <p>9 MR. APGOOD: Join.</p> <p>10 A. Could you ask the question again?</p> <p>11 Q. IMG's policy that affiliates can't use e-mail</p> <p>12 campaigns, whether they're solicited or unsolicited, is</p> <p>13 that in IMG's terms and conditions for affiliates?</p> <p>14 MR. FREEMAN: Object based on the compound</p> <p>15 question.</p> <p>16 MR. APGOOD: Join.</p> <p>17 A. I actually don't know.</p> <p>18 Q. I'm handing you what's been previously marked</p> <p>19 government Exhibit 10.</p> <p>20 Do you recognize this document?</p> <p>21 A. Do I recognize the document? I recognize, yeah,</p> <p>22 what's on it, yeah.</p> <p>23 Q. So you recognize the information contained in</p> <p>24 the document?</p> <p>25 A. Yes.</p>

16 (Pages 58 to 61)

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1 Q. And what is it?

2 A. It looks like it's a screen cap from SoulCash.

3 Q. Can you explain what a screen cap is?

4 A. It's a screen capture. A web page captured and

5 put onto a piece of paper.

6 Q. And it's your understanding that this is a

7 screen capture of information from the soulcash.com

8 website?

9 A. Yeah.

10 Q. And can you explain more specifically what this

11 is a screen capture of from the soulcash.com website?

12 A. It looks like it's a page from our banners area

13 where there are the full-page ads.

14 Q. And can you explain what a hosted full-page ad

15 is?

16 A. It's an advertisement in which we serve the

17 images from a server. The user would only have to use

18 code. They wouldn't have to serve the images of the ad.

19 Q. Looking at the first image on the page and the

20 associated text with that, how would an affiliate use this

21 information?

22 MR. APGOOD: Objection. Calls for

23 speculation.

24 MR. FREEMAN: Join.

25 A. They would copy this code right here.

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1 Q. When you say "this code," you're pointing to the

2 text next to the first image that begins with, "Start full

3 page ad cut"?

4 A. That's right.

5 MR. APGOOD: Objection. Form of the

6 question.

7 Q. And then -- go ahead.

8 A. And then they would paste it in an HTML file and

9 that would be it. Review the HTML and it would be there.

10 The image would be there.

11 Q. And does the text that the affiliate would cut

12 contain the affiliate's ID number?

13 A. Yeah.

14 Q. And what's the purpose of that?

15 MR. APGOOD: Objection. Calls for

16 speculation. Object to the form of the question.

17 A. The purpose of that would be to get credit of

18 any sales that might come through this ad.

19 Q. And could these hosted full-page ads be used by

20 an affiliate in an e-mail to promote IMG's website?

21 MR. APGOOD: Objection. Calls for

22 speculation.

23 MR. FREEMAN: Join.

24 A. I believe it's possible.

25 Q. I'm handing you what's been previously marked

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1 government Exhibit 11.

2 Directing your attention to physical pages one

3 and two of government Exhibit 11. Do you recognize the

4 information contained in physical pages one and two of

5 government Exhibit 11?

6 A. I do.

7 Q. And what is this information?

8 A. It looks like it's the gallery creator --

9 gallery link creator, and it looks like someone has

10 created some links.

11 Q. And is this the same gallery link creator you

12 testified about previously?

13 A. Yeah.

14 Q. And do the links in pages one and two of

15 government Exhibit 11 contain an affiliate's ID number?

16 MR. FREEMAN: I'm going to object to the

17 extent it calls for speculation.

18 MR. APGOOD: Join.

19 A. It does.

20 Q. Could the links provided in pages one and two of

21 government Exhibit 11 be used by an affiliate in an e-mail

22 to promote IMG's website?

23 MR. APGOOD: Object --

24 MR. FREEMAN: Objection to the extent it

25 calls for speculation.

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1 MR. APGOOD: Join.

2 A. You could put a link in the e-mail, yeah.

3 Q. Could an affiliate put these links in an e-mail,

4 to your knowledge?

5 MR. APGOOD: Objection. Calls for

6 speculation. I'm going to ask the witness please testify

7 only as to knowledge he has and not what could be possibly

8 done.

9 A. So what's the question?

10 Q. Do you see any reason why an affiliate could not

11 use these links in an e-mail to promote IMG's website?

12 MR. FREEMAN: Object to the form of the

13 question.

14 MR. APGOOD: Objection. Calls for

15 speculation.

16 A. I don't see any reason why they couldn't be

17 used.

18 Q. I'm handing you what's been previously marked

19 government Exhibit 12.

20 Directing your attention to physical pages one

21 and three of government Exhibit 12. Do you recognize the

22 information contained in pages one through three of

23 government Exhibit 12?

24 A. Yeah.

25 Q. And what is this information?

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1 A. It looks like it's the same thing. It looks
2 like it's a -- someone is in the process of generating
3 some links from SoulCash.
4 Q. What is TGP?
5 A. TGP is an acronym for thumbnail gallery post.
6 Q. What is a thumbnail gallery post?
7 A. It's a kind of free site that specializes in
8 offering links to surfers to galleries, sample galleries.
9 Q. What is an MGP?
10 A. It's the same thing but movies instead of
11 thumbnail. Just replace it with the word "movie."
12 Q. In the top middle of the page under
13 "Instructions," government Exhibit 12 reads, "You have
14 three ways to easily display and import gallery links into
15 your TGP/MGP."
16 What do you understand that statement to mean?
17 A. Let's see. Let me read it again. There are
18 three different ways that owners of TGPs and MGPs could
19 extract the information from this site.
20 Q. What are those three ways?
21 A. They can extract the information with only
22 hypertext links. Or they can extract hypertext links in
23 movies on that page. And then the third way is to extract
24 it with movie count, the link and a description of the
25 page.

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1 Q. And do the links contained in physical pages one
2 through three of government Exhibit 12 contain an
3 affiliate's ID number?
4 A. It does.
5 Q. And what's the purpose of that?
6 MR. FREEMAN: Objection to the extent it
7 calls for speculation.
8 A. The purpose of that is to be counted, like
9 credited if there were a sale that would come through this
10 link.
11 Q. And, to your knowledge, can the links in pages
12 one through three of government Exhibit 12 be used by an
13 affiliate in an e-mail --
14 MR. APGOOD: Objection. Calls for
15 speculation.
16 Q. -- to promote IMG's websites?
17 MR. APGOOD: Objection. Calls for
18 speculation.
19 A. Could you ask the question one more time,
20 please?
21 Q. To your knowledge, could the links contained in
22 pages one through three of government Exhibit 12 be used
23 by an affiliate in an e-mail to promote IMG's websites?
24 MR. APGOOD: Objection. Calls purely for
25 speculation and for nothing else.

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1 A. There's no reason it couldn't be put in an
2 e-mail.
3 Q. Thank you.
4 I'm handing you what's been previously marked
5 Exhibit 14.
6 Do you recognize the information contained in
7 government Exhibit 14?
8 A. Yes.
9 Q. What is this information?
10 A. These are promotional tools in SoulCash. These,
11 in particular, are the movies of the day.
12 Q. Are these promotional tools for affiliates to
13 use to promote IMG's websites?
14 MR. APGOOD: Object to the form of the
15 question.
16 A. They are.
17 Q. Directing your attention to the first image on
18 the page and associated text.
19 How would an affiliate use this promotional
20 tool?
21 MR. APGOOD: Objection. Calls for
22 speculation and nothing else.
23 MR. FREEMAN: Join.
24 A. They would copy the code on the right there next
25 to the image and they would paste it in their HTML file.

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1 Q. And does the code contain an affiliate ID?
2 A. In this case, I do not see an affiliate ID here.
3 Q. Do you see anything in government Exhibit 14 to
4 lead you to believe that an affiliate ID is in the text?
5 MR. APGOOD: Objection. Calls for
6 speculation.
7 MR. FREEMAN: Join. And object to the form
8 of the question.
9 A. I don't see one in this.
10 Q. Do you see the text immediately above the code
11 you're referring to that says your affiliate ID is already
12 there?
13 A. Uh-huh.
14 Q. Does that indicate to you that the affiliate ID
15 is contained in the code?
16 MR. FREEMAN: Object to the form.
17 A. That would --
18 MR. APGOOD: Join.
19 A. That would indicate that it is there. But as I
20 look at the code, I don't see it, so I can't verify that
21 it's there.
22 Q. Does IMG provide new movies every day for
23 affiliates?
24 MR. APGOOD: Objection. Calls for
25 speculation.

18 (Pages 66 to 69)